

BUDGET CHANGE FORM**21**

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:				
<input checked="" type="checkbox"/> Budget Appropriation	451-9516104153999	\$150,000	451-951610494800	\$150,000
<input type="checkbox"/> Budget Transfer	452-2970	\$150,000	452-3999	\$150,000

Explain the reason for the budget change:

At the January 17, 2006 meeting, the Milpitas City Council directed staff to proceed with the purchase of 1 million gallons per day of wastewater treatment capacity at the San Jose/Santa Clara Water Pollution Control Plant (WPCP). Staff has since negotiated with West Valley Sanitation District (WVSD) for 1 mgd of their available excess capacity. A purchase agreement with WVSD at \$6,993,450 is now ready for Council approval. Payment will be placed in a holding account until final environmental review clearances are completed with interest payable to WVSD at the city's portfolio investment rate. An additional budget appropriation of \$150,000 is needed from the Treatment Plant Fee fund to cover all costs of the transfer.

In addition to the transfer agreement approval with WVSD, approval of an amendment to the Milpitas Master Agreement with the Cities of San Jose and Santa Clara, owners of the Wastewater Treatment Plant, is requested. The proposed Master Agreement Third Amendment establishes the agreed upon new capacity right allocation and capital cost share for Milpitas at the WPCP due to the transfer of 1 mgd capacity from WVSD to Milpitas.

Environmental Review. This is to advise that this project will not have a significant effect on the environment. The documents address the environmental impacts, including any transfers of wastewater treatment capacity between tributary agencies.

Approve a budget appropriation of \$150,000 from the Treatment Plant Fee fund to the Sewer Treatment Capacity Project (CP 6104) for the transfer costs on the purchase agreement payment process.

☒ Check if City Council Approval required.

Meeting Date: April 18, 2006

Itemization of funds, if needed:			Amount
Requested by:	Division Head:	Date:	
	Department Head:	Date:	4/6/06
Reviewed by:	Finance Director:	Date:	4/6/06
Approved by:	City Manager:	Date:	
Date approved by City Council, if required:		Confirmed by:	

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**AGREEMENT BETWEEN WEST VALLEY SANITATION DISTRICT AND THE
CITY OF MILPITAS FOR THE REDISTRIBUTION OF ONE MILLION GALLONS
PER DAY OF TREATMENT PLANT CAPACITY**

THIS Agreement Between West Valley Sanitation District and the City of Milpitas for the Redistribution of One Million Gallons per Day of Treatment Capacity ("Agreement") is made this _____ day of _____, 2006, by and between the West Valley Sanitation District ("District") and the City of Milpitas ("City"), collectively referred to herein as the "Parties."

RECITALS

WHEREAS, the District, a county sanitation district organized and operated under the provisions of Division 5, Part 3, Chapter 3 (commencing at Section 4700) of the California Health and Safety Code has the right to discharge a set allocation of wastewater into the San Jose/Santa Clara Water Pollution Control Plant ("Treatment Plant") for treatment and disposal, pursuant to the terms of the Master Agreement for Wastewater Treatment Between City of San Jose, City of Santa Clara and West Valley Sanitation District, dated March 1, 1983, as amended (hereinafter referred to as the "West Valley Sanitation District Master Agreement"); and

WHEREAS, the City, a general law city organized and operated under the provisions of California law (hereinafter referred to as the "City") similarly has the right to discharge a set allocation of wastewater into the Treatment Plant for treatment and disposal, pursuant to the terms of the Master Agreement for Wastewater Treatment Between City of San Jose, City of Santa Clara and City of Milpitas, dated March 1, 1983, as amended (hereinafter referred to as the "Milpitas Master Agreement"); and

WHEREAS, under the terms of the Milpitas Master Agreement and the West Valley Sanitation District Master Agreement (collectively referred to as the "Master Agreements"), the District has a wastewater capacity allocation that allows it to discharge up to 13.052 million gallons per day (MGD) of wastewater into the Treatment Plant and the City has a capacity allocation that allows it to discharge 12.5 MGD of wastewater into the Treatment Plant. Both of these capacity allocations are based upon the Treatment Plant's design capacity of 167 MGD average dry weather flow; and

WHEREAS, under the terms of the West Valley Sanitation District Master Agreement, the District may designate all or a portion of its capacity right as "excess pooled capacity," which can then be redistributed to other public agencies such as the City by means of a separate written agreement upon recommendation of the Treatment Plant Advisory Committee and the payment of amounts designated in the Master Agreements; and

WHEREAS, on January 11, 2006, the District's Board of Directors designated one million gallons of the District's per day wastewater discharge capacity allocation as excess pooled capacity pursuant to the terms of Part III.A. of the West Valley Sanitation District Master Agreement; and

WHEREAS, the City has determined that it needs to acquire additional waste water treatment capacity to enhance its land development opportunities, and wishes to purchase the District's excess pooled capacity; and

WHEREAS, no other public agency which discharges wastewater into the Treatment Plant presently requires additional discharge capacity allocations; and

WHEREAS, the Treatment Plant Advisory Committee has therefore recommended that the District's one million gallons per day excess pooled capacity be redistributed to the City, pursuant to Part III.A.2. of the Milpitas Master Agreement; and

WHEREAS, by resolution, the city councils of the Cities of San Jose and Santa Clara have authorized and directed their respective staffs to modify the Master Agreements in order to reflect the redistribution of discharge capacity to the City, in the event that the City and the District are able to reach a separate written agreement regarding the amount, price and terms of such a redistribution.

NOW THEREFORE, it is hereby agreed by and between the Parties as follows:

AGREEMENT

1. Effective Date. Effective _____, 2006, the District's designated excess pooled capacity of one million gallons per day shall be transferred to the City, with all the associated rights thereunder pursuant to the terms of the Milpitas Master Agreement and this Agreement.
2. Consideration. Within forty-five(45) calendar days of the effective date of this Agreement, the City shall pay the District the sum of SIX MILLION NINE HUNDRED NINETY THREE THOUSAND FOUR HUNDRED FIFTY DOLLARS (\$6,993,450), plus interest at the rate and for the time period set forth in this Paragraph 2, as consideration for the redistribution of the above-described excess pooled capacity and the modifications to the Master Agreements stated herein. Such sum shall constitute the full and complete compensation and payment of costs for (a) the redistribution of the above-described capacity allocation, including but not limited to the reimbursement of the District for its proportional contribution for capital and land acquisitions and contributions to the Replacement Fund, and (b) the modification of the Master Agreements so as to reflect the agreed-upon redistribution of discharge capacity and required monetary contributions, as set forth in

Paragraph 3 of this Agreement. All monies shall be placed in a holding account to be opened by the City.

- a. The Parties agree that the payment for and redistribution of discharge capacity set forth herein are contingent upon the expiration of the statute of limitations period for bringing any challenges or claims against approval of this Agreement or the amendment of the Master Agreements under the California Environmental Quality Act.
 - b. The Parties also agree that the City shall pay interest to the District in an amount equal to the City's investment portfolio rate for the sum listed herein from the date of execution of this Agreement until the date of payment to the District.
3. New Capacity Allocations. The above-described payment is conditioned upon the Master Agreements being modified to reflect, prior to or coterminous to the effective date of this Agreement, the following new capacity allocations:

West Valley Sanitation District	12.052 MGD
City of Milpitas	13.5 MGD

In addition, the Master Agreements shall be modified to reflect the reallocation of replacement fund investments and other rights and obligations associated with the new capacity allocations, as mutually agreed to by the City and the District and as may be required by the City of San Jose and the City of Santa Clara.

4. Treatment Plant Capacity. In making this redistribution, the District makes no warranty with respect to the actual or design capacity of the Treatment Plant. It is understood by both Parties that should the Treatment Plant, for any reason, be unable to provide sufficient treatment services to those public agencies that discharge into its system, the redistributed capacity allocation set forth herein shall be subject to the same system-wide reductions applicable to all parties discharging wastewater into the Treatment Plant, in accordance with the operative master agreements.
5. Termination for Breach. If either Party breaches any provision of this Agreement, the other party may serve the party in breach with a written notice of such breach. If the breach is not cured within thirty (30) days following receipt of such notice, this Agreement may be terminated upon five (5) days prior written notice at the option of the injured party.
6. ARBITRATION OF DISPUTES. ANY DISPUTE OR CONTROVERSY BETWEEN THE PARTIES REGARDING THE REDISTRIBUTION OF CAPACITY AND THE CONSIDERATION SET FORTH IN THIS

AGREEMENT SHALL BE DECIDED BY A THREE MEMBER ARBITRATION PANEL AS SET FORTH HEREIN, WHICH ARBITRATION SHALL BE BINDING. WITHIN FOURTEEN (14) DAYS OF A NOTICE BY EITHER PARTY REQUESTING ARBITRATION AND STATING THE BASIS OF THE DISPUTE OR CONTROVERSY, EACH OF THE PARTIES HERETO SHALL APPOINT ONE ARBITRATION PANEL MEMBER, GIVING NOTICE TO THE OTHER PARTY OF THE APPOINTMENT. THE TWO APPOINTED ARBITRATION PANEL MEMBERS SHALL THEN IMMEDIATELY APPOINT A THIRD ARBITRATION PANEL MEMBER. IF THE TWO MEMBERS SELECTED BY THE PARTIES CANNOT AGREE ON THE SELECTION OF OR FAIL TO APPOINT A THIRD MEMBER WITHIN THIRTY (30) DAYS, EITHER PARTY MAY APPLY TO THE SUPERIOR COURT OF SANTA CLARA COUNTY, CALIFORNIA FOR THE APPOINTMENT OF SUCH THIRD MEMBER, GIVING NOTICE TO THE OTHER PARTY OF THE APPLICATION.

THE PARTIES SHALL PROCEED EXPEDITIOUSLY TO CONDUCT AND COMPLETE THE ARBITRATION. THE COSTS OF ARBITRATION SHALL BE BORNE EQUALLY BETWEEN THE PARTIES, EXCEPT THAT EACH PARTY SHALL BE RESPONSIBLE FOR ATTORNEY FEES, WHICH IT INCURS FOR ITS OWN BENEFIT.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION. THE PARTIES INDICATE THEIR AGREEMENT TO THESE ARBITRATION PROVISIONS BY INITIALING THIS SECTION.

_____ Initials of City Official _____ Initials of District Official

7. Notice. All notices or documents required under this Agreement shall be delivered to the locations designated below (or to such other address as has

been designated by the addressee in writing) by: (a) personal delivery, (b) facsimile, or (c) first class mail, postage prepaid, and such notice shall be deemed duly given on the date of delivery if delivered personally or by facsimile, or if mailed, on the third day after the date of mailing:

City of Milpitas

455 E. Calaveras Blvd

Milpitas, California 95035

Attn: Greg Armendariz,

Public Works Director/City Engineer

FAX: (408) 586-3305

West Valley Sanitation District

100 E. Sunny Oaks Ave.

Campbell, California 95008

Attn: Robert Reid,

District Manager and Engineer

FAX: (408) 364-1821

8. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assignees.
9. Choice of Law. This Agreement is made and is to be performed in California and any dispute arising therefrom shall be governed and interpreted in accordance with California laws.
10. Headings and Subheadings. All article headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
11. No Waiver. No waiver by a Party of any breach or default by the other Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach of default in the performance by such other Party of the same or any other obligations of such other Party hereunder. The giving of a waiver by a Party in any one instance shall not limit or waive the necessity to obtain such Party's waiver in any future instance. No waiver of any rights under this Agreement shall be binding unless it is in writing signed by the Party waiving such rights.
12. Good Faith and Fair Dealing. The Parties agree to deal fairly and to act in good faith in the performance or enforcement of this Agreement. Wherever this Agreement requires a consent or approval of a Party hereto, such consent or approval shall not be unreasonably withheld or delayed except as otherwise specifically provided herein.

13. Severability. Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of any party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

14. Legal Capacity. Each Party represents and warrants that it has the legal capacity to enter into this Agreement and to perform all obligations undertaken herein.

15. Counterparts. This Agreement and any amendments may be executed in counterparts with one or more duplicate originals which shall constitute one and the same instrument.

This Agreement constitutes the entire agreement of the Parties regarding the redistribution of capacity allocation in the Treatment Plant. This Agreement cannot be modified except in a writing executed by the Parties.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates set forth beside their signature.

Dated:

West Valley Sanitation District of Santa Clara County

Attest:

by: _____
Chairperson, Board of Directors

Secretary to the Board

Approved as to form:

District General Counsel

Dated:

City of Milpitas

Attest:

by: _____
City Manager

City Clerk

Approved as to Content:

by: _____
City Engineer

Approved as to form:

City Attorney

Doc. 812891v5

**THIRD AMENDMENT TO MASTER
AGREEMENT FOR WASTEWATER TREATMENT
BETWEEN
CITY OF SAN JOSE, CITY OF SANTA CLARA
AND
CITY OF MILPITAS**

THIS THIRD AMENDMENT TO MASTER AGREEMENT is dated for convenience this _____ day of _____, 2006 by and between the CITY OF SAN JOSE and the CITY OF SANTA CLARA, both being municipal corporations of the State of California (hereinafter referred to as "FIRST PARTIES"), and the CITY OF MILPITAS, a municipal corporation of the State of California (hereinafter referred to as "MILPITAS".)

WHEREAS, FIRST PARTIES and MILPITAS have previously entered into a Master Agreement for Wastewater Treatment dated March 1, 1983, a First Amendment to Master Agreement for Wastewater Treatment, dated December 17, 1985, and a Second Amendment to Master Agreement for Wastewater Treatment, dated December 4, 1995 (collectively referred to as "MILPITAS MASTER AGREEMENT"); and

WHEREAS, FIRST PARTIES and West Valley Sanitation District ("DISTRICT") have previously entered into a Master Agreement for Wastewater Treatment dated March 1, 1983, a First Amendment to Master Agreement for Wastewater Treatment, dated December 17, 1985, and a Second Amendment to Master Agreement for Wastewater Treatment, dated December 4, 1995 (collectively referred to as "DISTRICT MASTER AGREEMENT"); and

WHEREAS, DISTRICT has designated a portion of the San José/Santa Clara Water Pollution Control Plant ("Plant") capacity allocated to DISTRICT under the DISTRICT MASTER AGREEMENT as "excess pooled capacity" in accordance with Part III of the DISTRICT MASTER AGREEMENT; and

WHEREAS, MILPITAS and DISTRICT have negotiated for the sale by DISTRICT of one million gallons per day (1 mgd) of DISTRICT's allocated Plant capacity to MILPITAS; and

WHEREAS, MILPITAS and DISTRICT have also negotiated for the transfer of the portion of DISTRICT's interest in Plant buffer lands that is associated with 1 mgd in Plant capacity;

NOW, THEREFORE, MILPITAS and FIRST PARTIES agree as follows:

SECTION 1. Exhibits, A, B, C, and D of the MILPITAS MASTER AGREEMENT, are amended to read as set forth in "Revised Exhibit A", "Revised Exhibit B", "Revised Exhibit C", and "Revised Exhibit D" respectively, as attached hereto and incorporated by reference herein.

SECTION 2. All other provisions of said MASTER AGREEMENT not amended by this THIRD AMENDMENT shall remain unchanged.

SECTION 3. This THIRD AMENDMENT shall be effective as of 12:01 a.m., July 1, 2006.

SECTION 4. For and in consideration of the approval of this THIRD AMENDMENT by FIRST PARTIES, MILPITAS has agreed to defend, indemnify, and hold harmless FIRST PARTIES, and officers, contractors, consultants, attorneys, employees and agents from any and all claim(s), action(s), or proceeding(s) (collectively referred to as "proceeding") brought against FIRST PARTIES or their officers, contractors, consultants, attorneys, employees, or agents to challenge, attack, set aside, void or annul this THIRD AMENDMENT and/or any action taken to provide related environmental clearance under the California Environmental Quality Act of 1970, as amended ("CEQA") by FIRST

PARTIES or their officers, contractors, consultants, attorneys, employees, agents, advisory agencies, boards or commissions, appeals boards or commissions.

A. MILPITAS's indemnification is intended to include, but not be limited to, damages, fees and/or costs awarded against or incurred by FIRST PARTIES, if any, and costs of suit, claim or litigation, including without limitation, attorneys' fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by MILPITAS, FIRST PARTIES, and/or parties initiating or involved in such proceeding.

B. MILPITAS further agrees to indemnify FIRST PARTIES for all of FIRST PARTIES' costs, fees, and damages incurred in enforcing the indemnification provisions of this THIRD AMENDMENT; and to defend, indemnify and hold harmless FIRST PARTIES and their respective officers, contractors, consultants, attorneys, employees and agents from and for all costs and fees incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as an environmental impact report, negative declaration, specific plan, or general plan amendment) if made necessary by said proceeding and if MILPITAS desires to pursue such City approvals and/or clearances, after initiation of the proceeding and that are conditioned on the approval of these documents.

C. In the event that MILPITAS is required to defend FIRST PARTIES in connection with such proceeding, each FIRST PARTY shall have and retain the right to approve:

1. The counsel to so defend FIRST PARTY; and
2. All significant decisions concerning the manner in which the defense is conducted; and
3. Any and all settlements, which approval shall not be unreasonably withheld.

D. FIRST PARTIES shall also have and retain the right to not participate in the defense, except that each FIRST PARTY agrees to reasonably cooperate with MILPITAS in the defense of the proceeding. If a FIRST PARTY chooses to have counsel of its own defend any proceeding where MILPITAS has already retained counsel to defend City in such matters, the fees and expenses of the additional counsel selected by FIRST PARTY shall be paid by FIRST PARTY. Notwithstanding the immediately preceding sentence, if a FIRST PARTY City Attorney's Office participates in the defense, all City Attorney fees and costs shall be paid by MILPITAS.

IN WITNESS WHEREOF, FIRST PARTIES and the CITY OF MILPITAS have caused this THIRD AMENDMENT to MASTER AGREEMENT as to be executed in their respective names and their respective seals to be affixed hereunto by their duly authorized officers, all as of the date first above written.

"FIRST PARTIES"

APPROVED AS TO FORM:

CITY OF SAN JOSE,
a municipal corporation

MOLLIE J. DENT
Senior Deputy City Attorney

DEANNA SANTANA
Deputy City Manager
200 East Santa Clara Street
San José, CA 95113-1905

APPROVED AS TO FORM:

CITY OF SANTA CLARA,
a municipal corporation

Attorney

Mayor

ATTEST:

City Clerk

City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone (408) 984-3140

RD:MJD
3/28/06

APPROVED AS TO FORM:

Attorney

ATTEST:

City Clerk

"CITY OF MILPITAS"
a municipal corporation

By: _____

City Manager
455 E. Calaveras Blvd.
Milpitas, CA 95035
(408) 586-3050

EXHIBIT A

**SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT**

TREATMENT PLANT CAPACITY ALLOCATIONS

The attached Table 1 contains the Agencies' and First Parties' treatment plant capacities achieved by implementation of the Intermediate-term Improvements and First Stage Expansion. Table 2 shows the Agencies' and First Parties' treatment plant capacities, as effective with the transfer of 1 MGD from West Valley to Milpitas (July 1, 2006.)

Table 1 - 167 MGD Plant, Intermediate Term Improvements and First Stage Expansion. Increased capacity was allocated only to those Agencies that elected to participate in Plant expansion to 167 MGD. Milpitas was allocated 4 MGD of the 24 MGD expansion, and the First Parties' share the remaining 22 MGD based on assessed valuation. BOD, SS, and Ammonia capacities were allocated in the same proportion as Flow.

Table 2-- 167 MGD Plant, After transfer of 1 MGD from West Valley to Milpitas. Table 2 shows the Agencies' and First Parties' treatment plant capacities, as effective with the transfer of 1 MGD from West Valley to Milpitas (July 1, 2006.) The other Agencies' capacities remain the same as in the 143/167 MGD Plant (Table 2).

TABLE 1

**SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT**

167 MGD PLANT

SUMMARY OF CAPACITY ALLOCATION*

**(Intermediate-Term, First Stage Expansion & South Bay Water Recycling
Improvements Implemented)**

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José ^a	110.754	390.229	346.198	34.318
Santa Clara ^a	21.344	75.206	66.719	6.613
Subtotal ^b	132.098	465.435	412.917	40.931
West Valley	13.052	31.713	30.12	3.156
Cupertino	8.600	16.419	17.856	2.506
Milpitas	12.500	24.819	22.125	2.386
Burbank	0.400	0.815	0.853	0.297
Sunol	0.350	1.799	2.129	0.324
Subtotal	34.902	75.565	73.083	8.669
TOTAL	167.000	541.001	486.000	49.600

*The term "capacity" is defined as the mean peak five-day dry weather plant treatment capacity.

Footnotes:

- San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of July 1, 2006.
- CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.

TABLE 2

**SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT**

167 MGD PLANT

SUMMARY OF CAPACITY ALLOCATION*

(After Transfer of 1 MGD from West Valley to Milpitas)

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José ^a	110.754	390.229	346.198	34.318
Santa Clara ^a	21.344	75.206	66.719	6.613
Subtotal ^b	132.098	465.435	412.917	40.931
West Valley	12.052	29.283	27.812	2.914
Cupertino	8.600	16.419	17.856	2.506
Milpitas	13.500	27.249	24.433	2.628
Burbank	0.400	0.815	0.853	0.297
Sunol	0.350	1.799	2.129	0.324
Subtotal	34.902	75.565	73.083	8.669
TOTAL	167.000	541.000	486.000	49.600

*The term "capacity" is defined as the mean peak five-day dry weather plant treatment capacity.

Footnotes:

- a. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of July 1, 2006.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.

EXHIBIT B

**SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
REPLACEMENT COST OF PLANT & EQUIPMENT
June 2005**

FACILITY	ACQUISITION DATE	ORIGINAL COST	REPLACEMENT COST	ENR COST INDEXES
Asset #1 - Original primary plant	1958	3,786,400	34,813,300	899.60
Asset #2 - Plant Additions	1960	1,370,200	11,587,000	978.10
Asset #3 - Plant Additions & New Secondary Facility	1963	24,166,800	196,282,700	1,018.37
Asset #4 - Final Tank	1965	1,183,000	8,388,200	1,166.50
Asset #5 - Digestors	1966	993,600	6,389,100	1,286.30
Other Projects:				
1965-66	1965	103,900	736,700	1,166.50
1966-67	1966	253,800	1,632,000	1,286.30
1967-68	1967	24,200	142,400	1,406.10
1968-69	1968	322,100	1,746,000	1,525.90
1969-70	1969	59,900	301,100	1,645.70
1970-71	1970	102,700	481,100	1,765.50
Sludge Lagoons	1968	839,000	4,547,800	1,525.90
Foam Flotation Program	1970	23,000	107,800	1,765.50
1970 94/MGD Improvements	1970	5,809,400	27,216,500	1,765.50
1970 66/MGD Additions	1970	23,049,000	107,982,400	1,765.50
A.W.T.F.	1977	62,810,900	166,205,400	3,125.78
Other Projects:				
1977-78	1977	745,500	1,972,700	3,125.78
1978-79	1978	312,200	756,800	3,411.98
1979-80	1979	1,421,100	3,257,200	3,608.71
1980-81	1980	1,962,300	3,788,400	4,284.29
1981-82	1981	535,200	1,006,100	4,400.00
1982-83	1982	1,777,765	2,861,000	5,139.51
CAPITAL IMPROVEMENT PROGRAM:				
Intermediate-term Improvement	1987	88,699,500	132,975,800	5,517.18
First Stage Expansion	1987	20,035,100	30,036,100	5,517.18
1987 Capitalized Expenditures	1987	894,900	1,341,600	5,517.18
1989 Capitalized Expenditures	1989	527,473	760,600	5,735.84
1990 Capitalized Expenditures	1990	823,720	1,127,500	6,042.56
1991 Capitalized Expenditures	1991	114,902	155,000	6,131.10
1992 Capitalized Expenditures	1992	407,154	537,800	6,262.14
1993 Capitalized Expenditures	1993	1,291,825	1,660,800	6,433.55
1994 Capitalized Expenditures	1994	255,378	322,100	6,557.48
1995 Capitalized Expenditures	1995	10,595,576	13,394,700	6,542.75
1996 Capitalized Expenditures	1996	3,396,270	4,287,600	6,551.75
1997 Capitalized Expenditures	1997	9,320,130	11,505,400	6,700.22
1998 Capitalized Expenditures	1998	2,829,981	3,460,300	6,764.62
1999 Capitalized Expenditures	1999	133,138,713	161,426,600	6,821.78
2000 Capitalized Expenditures	2000	2,464,590	2,845,100	7,165.08
2001 Capitalized Expenditures	2001	3,866,326	4,316,200	7,409.12
2002 Capitalized Expenditures	2002	930,265	1,004,200	7,662.33
2003 Capitalized Expenditures	2003	1,663,511	1,763,600	7,801.70
2004 Capitalized Expenditures	2004	3,321,630	3,371,800	8,148.25
2005 Capitalized Expenditures	2005	665,760	665,800	8,271.20
TOTAL		416,894,669	959,160,300	(*)

- (*) Plant and equipment replacement cost is distributed to parameters using the percentages contained in the most current Revenue Program (Form No. 8, Summary of the Distribution of Capital Costs).

NOTE:

- A. Major plant facilities or equipment items shall be added to this Exhibit in the year purchased. Construction projects shall be added to this Exhibit in the year of acceptance at full construction value.
- B. Process related facilities and equipment that cost in excess of \$2 million shall be allocated to parameters (flow, BOD, SS, Ammonia) based on engineering design. Capital costs that are less than \$2 million and/or are not process related shall be allocated to parameters using the percentages contained in the most current Revenue Program (Form No. 8, Summary of Distribution of Capital Costs).
- C. This Exhibit shall not include replacement or rehabilitation costs.
- D. Facilities and equipment sold or otherwise disposed shall be deleted from this exhibit.
- E. This exhibit shall be updated annually using the June ENR (San Francisco) Construction cost index.

EXHIBIT C

**SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
LAND DISTRIBUTION**

1. Table 1 includes the original land purchase price for each parcel purchased before June 30, 1982 ("Pre-1982 Land."). The City of San José's average yearly rate of return for all investments was applied to this amount and compounded to establish a June 30, 1982 value for all Pre-1982 Land.
2. Land participation for Pre-1982 Lands was based upon the 167 MGD capacity of the Plant (Flow BOD, Suspended Solids and Ammonia). Percentage of participation in Pre-1982 Land is based upon the total acreage and not on an individual parcel basis.
3. Agencies which still owe the City of San José and West Valley Sanitation District for their allocated share of cost for Pre-1982 Land shall pay all the costs of this land from sale, lease or rental revenues to be received from the Water Pollution Control Plant properties. Percentage of revenue shall be based upon each Agency's full capacity percentage. The Pre-1982 Land costs will be paid off only from sale, lease or rental revenues of the Plant property and shall have no fixed term. Table 2 shows First Parties' and Agencies' allocations and amounts/credits due for Pre-1982 Land costs as of June 30, 2005.
4. Table 3 shows the original purchase price, date of purchase and cost allocation for all land purchased on or after July 1, 1982 ("Post 1982 Land"). Cost allocation in Post 1982 Land was based on the flow and wastewater strength allocations for First Parties and Participating

Agencies, except for land purchased for recycled water facilities, which is based on flow allocation only.

5. Table 4 shows the percentage participation in Pre-1982 Land and Post-1982 Land for First Parties and Agencies effective July 1, 2006.
6. Sale, lease or rental revenues from Water Pollution Control Plant property shall be first applied to an Agency's debt, and only upon completion of that debt, will revenues be passed on to the Agency.
7. If and when expansion of the facilities takes place in the future, land values shall again be adjusted based upon the new MGD denominator. Each Agency's percentage of participation in land shall, at that time, be recomputed based upon total land cost shown in the applicable Land Cost Allocation.
8. All purchases of land in the future shall be distributed to all Agencies in the percentage of discharge capacity at the Plant, except that land purchased for recycling improvements shall be based on the Agencies' and First Parties' purchased capacity in the 167 MGD Plant for the flow parameter only.

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
LAND COST ALLOCATION METHODOLOGY

1. Attachment A is a Treatment Plant Property map.
2. Table 1 includes the original land purchase price for each parcel purchased before June 31, 1982. This amount was then applied to the City of San José's average yearly rate of return for all investments and compounded to establish a June 30, 1982 value for the Pre-1982 Land.
3. Table 2 shows the First Parties' and Agencies share of Pre-1982 land Costs. Table 2 also shows the amounts still due or owing by First Parties and Agencies for Pre-1982 Land Costs, as of June 30, 2005.
4. Table 3 shows the land allocation for First Parties and Agencies for all land purchased on or after July 1, 1982, based on the amount actually paid by First Parties and Agencies for land purchased on or after July 1, 1982.
5. Table 4 shows the land participation allocation, effective July 1, 2006, for West Valley and Milpitas, reflecting the transfer of land equivalent to 1 MGD capacity from West Valley to Milpitas. The transfer of capacity and adjusted land allocation percentages shall not affect the amounts due or owing by Milpitas or West Valley for Pre-1982 Land Costs.

TABLE 1

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT

PRE-1982 LAND PURCHASES

Pre-1982 Purchases Parcel	Acres	Original Cost	Purchase Date	Cost*
Berger Williamson	43.668	\$ 15,284	8/49	\$ 88,282
Coolidge Quitclaim	--	150	3/52	805
John R. Watrous	106.747	101,043	7/54	490,206
John R. Medina	16.970	15,067	8/54	73,106
Other Costs (Easement- Condemnation)*	--	23,468	1956-57	106,183
Curtner-Zanker	.776	1,000	7/55	5,082
Los Altos Garbage	2.045	1,000	8/55	4,692
James Clayton	181.680	182,160	4/58	795,944
A. M. Standish	.197	120	10/61	457
Spring Valley	.180	50	4/62	189
Beatrice Standish	39.888	55,109	7/62	202,258
Other Costs (Unallocated)*	--	603	3/65	2,048
Nine-Par	46.970	201,515	1/68	596,405
A. L. Kricheberg	41.13	162,170	4/69	452,708
Anselmo-Campi	34.48	208,771	7/69	541,583
Casteel	117.78	932,240	11/69	2,418,376
Chisolm-Hopham	Parcel	5,232	8/70	12,738
Rankin-Gilman	Parcel	600	8/70	1,461
Owens-Corning	3.16	23,743	11/70	57,801
Standish	630.0	2,831,034	4/71	6,892,016
Owens-Corning	2.58	17,133	6/71	41,713
Phillips-Bosio	Parcel	2,136	12/71	4,943
Zanker Ranch	145.7	1,496,478	8/72	3,446,515
Garcia	19.54	236,328	12/72	517,884
Martin-Moore	16.47	200,446	1/73	439,257
Tempco	12.33	327,153	7/75	566,730
County of Santa Clara	Parcel	4,495	1975-76	7,788
County of Santa Clara	2.98	13,476	4/76	20,716
Brazil	54.546	513,359	7/76	841,819
McCarthy (1st)	43.0	483,880	12/76	793,479
McCarthy (2 nd)	43.0	483,879	4/77	793,478
McCarthy (3 rd)	43.0	483,879	1/78	743,861
Other Costs (Unallocated)	--	47,693	1978-79	67,043
Calvo	58.415	586,405	1/78	901,473
Leslie Salt	Parcel	820	9/78	1,153
Graham-Cassin	52.8	3,339,932	8/80	3,775,793
Geomax	4.2	273,972	1/81	291,849
TOTAL	1,764.23**	\$13,271,823		\$25,997,834

*Represents costs not allocable to a specific land purchase (e.g., appraisal of land not purchased).

**Acreage has been and will be reduced by the following completed and pending conveyances:

- Santa Clara Valley Water District - flood control easement dated November 25, 1986.
- State of California – 14.8 acres for widening of State Route 237, _____ dated _____, 1992.
- PG&E - various completed and pending easements.
- Los Esteros Critical Energy Facility - access road easement conveyed November 3, 2003, pursuant to Conveyance Agreement dated November 22, 2002, as amended May 4, 2005; open space easement and pole line license pursuant to Conveyance Agreement dated pending as of March 2006.
- City of Santa Clara, Silicon Valley Power, electric transmission line easement pursuant to Conveyance Agreement dated July 15, 2003, pending as of March 2006.
- Various Agency sanitary sewer trunkline easements.

TABLE 2

**SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT**

LAND COST ALLOCATION

PRE-1982 PURCHASES

AGENCY	% SHARE	AMOUNT SHOULD HAVE PAID 1982 DOLLARS	AMOUNT PAID 1982 DOLLARS	AMOUNT PAYABLE <DUE> AS OF JUNE 30, 2005
San José	66.181	\$17,205,627	\$19,134,275	<\$747,289>
Santa Clara	15.620	\$4,060,862	\$3,234,047	\$0
West Valley	7.009	\$1,822,188	\$1,945,035	<\$47,671>
Cupertino	4.463	\$1,160,283	\$1,141,582	\$0
Milpitas	6.166	\$1,603,026	\$523,426	\$704,692
Burbank	0.248	\$64,215	\$9,203	\$40,192
Sunol	0.313	\$81,373	\$10,266	\$52,076,
TOTAL	100%	\$25,997,834	\$25,997,834	

County Sanitation District 2-3 rents capacity from San José and Santa Clara.
The rental agreement does not entitle it to share in land revenue.

TABLE 3
SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
LAND COST ALLOCATION POST-1982 LAND PURCHASES

AGENCY	SOUTH Bay Water Recycling* Phase 1. land and easements ____ acres; \$ ____; various dates)	Moseley Tract (56 acres; \$460,000; 9/96)	McCarthy Ranch (6 acres; \$6,534,000; 8/00)	Cargill Pond A-18 (856 acres; \$13,301,250; 10/05)	Silver Creek Reservoir land and Easements (____ acres; \$7,800,000; 6/05)
San José	64.659%	67.607%	67.069%	67.015%	64.659%
Santa Clara	14.440%	14.511%	15.049%	15.103%	14.440%
West Valley	7.816%	6.928%	6.928%	6.928%	7.816%
Cupertino	5.150%	4.360%	4.360%	4.360%	5.150%
Milpitas	7.485%	6.040%	6.040%	6.040%	7.485%
Burbank	0.240%	0.238%	0.238%	0.238%	0.240%
Sunol	0.210%	0.316%	0.316%	0.316%	0.210%
TOTAL	100%	100%	100%	100%	100%

County Sanitation District 2-3 rents capacity from San José and Santa Clara.
The rental agreement does not entitle it to share in land revenue.

TABLE 4
SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
LAND PARTICIPATION ALLOCATION
EFFECTIVE JULY 1, 2006

AGENCY	Pre-1982 Land	Moseley Tract , McCarthy, Cargill Pond A-18	South Bay Water
San José	66.181	67.607%	64.65%
Santa Clara	15.620	14.511%	14.440%
West Valley	6.472	6.397%	7.217%
Cupertino	4.463	4.360%	5.150%
Milpitas	6.703	6.571%	8.084%
Burbank	0.248	0.238%	0.240%
Sunol	0.313	0.316%	0.210%
TOTAL	100%	100%	100%

County Sanitation District 2-3 rents capacity from San José and Santa Clara.
The rental agreement does not entitle it to share in land revenue.

EXHIBIT D

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT

PARTICIPATION IN MAJOR PROCESS RELATED IMPROVEMENTS

Intermediate Term Improvements and First Stage Expansion

The construction and design cost of the Intermediate-term Improvement Project for restoration of the Plant capacity to 143 MGD was Eighty-Nine Million Three Hundred Thousand Two Hundred and Thirty Dollars (\$89,300,230.00). The construction costs and design cost of the First Stage Expansion Project for expansion of Plant capacity to 167 MGD was Twenty-Seven Million Eighty-Four Thousand Eight Hundred and Four Dollars (\$27,084,804.00). AGENCY has fully paid all amounts due for its capacity in the Intermediate Term Improvements and the First Stage Expansion Project.

Water Recycling Improvements

In October 1991, the Regional Water Quality Control Board (RWQCB) approved the San José Action Plan which included development of a reclamation program to reclaim a portion of the San José/Santa Clara Water Pollution Control Plant's (WPCP) effluent, thereby providing an alternative to discharging treated effluent to South San Francisco Bay (Bay). In October 1993, the RWQCB incorporated the Action Plan into the WPCP's NPDES permit. The South Bay Recycling Program (SBWRP) is intended to satisfy this permit requirement.

Implementation of the SBWRP has been divided into two phases. Under the Phase 1, Water Recycling Program, approximately 9,000 acre-feet per year (up to 21.1 million gallons per day) of recycled water will be produced and distributed beginning in November 1997. The budgeted cost of Phase I was \$139,840,000. Construction of Phase II is now underway, with an estimated cost of \$100,000,000.

On January 12, 1995, TPAC approved a cost sharing method whereby FIRST PARTIES and AGENCIES would participate in payment for the Water Recycling Program based on their respective flows to the WPCP. Table 1 contains FIRST PARTIES' and AGENCIES' final allocation of Phase 1 recycling costs. Table 2 contains FIRST PARTIES and AGENCIES share of Phase 2 Recycling costs. The final Phase 2 cost allocation will be adjusted to reflect the actual cost when construction of the Phase 2 facilities is completed.

RD:MJD
3/28/06

FIRST PARTY SANTA CLARA and AGENCY MILPITAS elected to cash fund their share of the Phase 1 Recycling Costs. Table 3 shows the debt service allocation for the bond issued by San José for Phase 1 costs for FIRST PARTY SAN JOSE, and all AGENCIES except MILPITAS.

Only AGENCY MILPITAS elected to cash fund its share of the Phase 2 Recycling Costs. FIRST PARTIES and all other AGENCIES chose to utilize State Revolving Loan Fund proceeds for their share of the Phase 2 Recycling costs. Table 4 shows the debt service allocation for the SRLF proceeds.

TABLE 1

**SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT**

Participation in South Bay Water Recycling Program
Phase 1 Capital Costs

<u>Agency</u>	<u>Percent</u>	<u>Phase 1 Budgeted Costs</u>
City of San José	63.833%	\$89,264,067.20
City of Santa Clara	14.256%	\$19,935,590.40
West Valley Sanitation District	7.816%	\$10,929,894.40
Cupertino Sanitary District	5.150%	\$7,201,760.00
City of Milpitas	7.485%	\$10,467,024.00
County Sanitation District 2-3*	1.010%	\$1,412,384.00
Burbank Sanitary District	.240%	\$335,616.00
Sunol Sanitary District	.210%	\$293,664.00
TOTAL	100%	\$139,840,000

*County Sanitation District 2-3 (CSD 2-3) has entered into an agreement with FIRST PARTIES for sharing Water Pollution Control Plant costs on a different basis than the other AGENCIES. The agreement provides for adjusting payments to reflect changes in CSD 2-3's flow and loadings. The agreement between CSD 2-3 and FIRST PARTIES does not effect the other AGENCIES participation in the South Bay Water Recycling Program Phase 1 capital costs.

TABLE 2
SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

Participation in South Bay Water Recycling Program
Phase 2 Capital Cost

<u>Agency</u>	<u>Percent</u>	<u>Phase 2 Estimated Costs</u>
City of San José	63.833%	\$63,833,000
City of Santa Clara	14.256%	14,256,000
West Valley Sanitation District	7.816%	7,816,000
Cupertino Sanitary District	5.150%	5,150,000
City of Milpitas	7.485%	7,485,000
County Sanitation District 2-3*	1.010%	1,010,000
Burbank Sanitary District	.240%	240,000
Sunol Sanitary District	.210%	210,000
TOTAL	100%	\$100,000,000

*County Sanitation District 2-3 (CSD 2-3) has entered into an agreement with FIRST PARTIES for sharing Water Pollution Control Plant costs on a different basis than the other AGENCIES. The agreement provides for adjusting payments to reflect changes in CSD 2-3's flow and loadings. The agreement between CSD 2-3 and FIRST PARTIES does not effect the other AGENCIES participation in the South Bay Water Recycling Program Phase 2 capital costs.

TABLE 3
SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

PHASE 1 RECYCLING DEBT ALLOCATION

Series 2005 A Refunding Bonds - Principle \$54,020,000; last payment due November 15, 2016

Series 2005 B Refunding Bonds - Principle \$27,130,000; last payment due November 15, 2020

San José	West Valley	Cupertino	District 2-3	Sunol	Burbank
80.21%	10.594%	7.377%	1.436%	.237%	.075%

**TABLE 4
SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT**

STATE REVOLVING LOAN FUND DEBT ALLOCATION FY 1998 thru 2019

Repayment Period(s)	Annual Debt Service Payment	Annual San José	Annual Santa Clara	Annual West Valley	Annual Cupertino	Annual Sanitation District 2-3	Annual Burbank	Annual Sunol
	100.000%	68.998%	15.409%	8.448%	5.567%	1.092%	0.259%	0.227%
FY 1998/1999	\$1,661,799	\$1,146,608	\$256,067	\$140,389	\$92,512	\$18,147	\$4,304	\$3,772
FY 1999/2000 thru								
FY 2017/2018	\$4,463,882	\$3,079,989	\$687,840	\$377,109	\$248,504	\$48,746	\$11,561	\$10,133
FY 2018/2019	\$1,804,020	\$1,244,738	\$277,981	\$152,404	\$100,430	\$19,700	\$4,672	\$4,095